

Senate File 2364 - Reprinted

SENATE FILE 2364
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 3153)

(As Amended and Passed by the Senate June 4, 2020)

A BILL FOR

1 An Act relating to a construction manager-at-risk commercial
2 construction alternative delivery method and prohibiting
3 certain other alternative delivery methods in the public
4 sector and including effective date and applicability
5 provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

Section 1. Section 26.2, subsection 3, paragraph b, subparagraph (5), Code 2020, is amended to read as follows:

(5) Construction or repair or maintenance work performed for a city utility under chapter 388 when such work is performed by its employees or ~~performed for a rural water district under chapter 357A by its employees~~ when such work relates to existing utility infrastructure or establishing connections to existing utility infrastructure. For purposes of this subparagraph, *"utility infrastructure"* includes facilities used for the storage, collection, disposal, treatment, generation, transmission, or distribution of water, sewage, waste, electricity, gas, or telecommunications service.

Sec. 2. Section 26.2, subsection 3, paragraph b, Code 2020, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) Construction or repair or maintenance work performed for a rural water district under chapter 357A by its employees.

Sec. 3. Section 26.4, Code 2020, is amended to read as follows:

~~26.4 Exemptions from competitive bids and quotations~~
Architectural and engineering services — exemptions — prohibitions.

1. Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to sections 26.3 and 26.14.

2. Fee-based selection of an architect, landscape architect, or engineer for a public improvement shall be prohibited.

Sec. 4. Section 262.34, Code 2020, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding any provision of this chapter to the contrary, the state board of regents shall not be authorized to enter into a design-build contract to

1 construct, repair, or improve buildings or grounds. For
2 purposes of this subsection, "*design-build contract*" means
3 a single contract providing for both design services and
4 construction services that may include maintenance, operations,
5 preconstruction, and other related services.

6 Sec. 5. EFFECTIVE DATE. The following, being deemed of
7 immediate importance, takes effect upon enactment:

8 The section of this division of this Act amending section
9 262.34.

10 Sec. 6. APPLICABILITY. The section of this division of
11 this Act amending section 262.34 does not apply to projects
12 using design-build if an architect has entered into a contract
13 to work with the state board of regents on a project using
14 design-build prior to the effective date of the section of this
15 division of this Act amending section 262.34.

16 DIVISION II

17 GUARANTEED MAXIMUM PRICE CONTRACTS

18 Sec. 7. NEW SECTION. 26A.1 Definitions.

19 As used in this chapter, unless the context clearly
20 indicates otherwise:

21 1. "*Construction manager-at-risk*" means a sole
22 proprietorship, partnership, corporation, or other legal entity
23 that assumes the risk for the construction, rehabilitation,
24 alteration, or repair of a project and provides consultant
25 services to the government entity in the development and design
26 phases, working collaboratively with the design professionals
27 involved.

28 2. "*General conditions*" means work which will not be
29 incorporated into the completed project. This work includes
30 but is not limited to job site cleaning and temporary
31 structures.

32 3. "*Governmental entity*" means the state, political
33 subdivisions of the state, public school corporations, and all
34 officers, boards, or commissions empowered by law to enter
35 into contracts for the construction of public improvements,

1 including the state board of regents.

2 4. "*Guaranteed maximum price contract*" means the agreed
3 to fixed or guaranteed maximum price pursuant to a contract
4 entered into by the construction manager-at-risk and the
5 governmental entity.

6 5. "*Public improvement*" means as defined in section 26.2.

7 6. "*Repair or maintenance work*" means as defined in section
8 26.2.

9 7. "*Self-perform*" means work that is executed by
10 the construction manager-at-risk without the use of a
11 subcontractor. Electrical, mechanical, fire suppression, and
12 plumbing work may not be self-performed.

13 Sec. 8. NEW SECTION. 26A.2 Authorization.

14 Notwithstanding any other law to the contrary, a
15 governmental entity shall be authorized to enter into a
16 guaranteed maximum price contract for the construction of a
17 public improvement pursuant to this chapter.

18 Sec. 9. NEW SECTION. 26A.3 Guaranteed maximum price
19 contract — process.

20 1. A governmental entity shall publicly disclose the
21 governmental entity's intent to enter into a guaranteed
22 maximum price contract and the governmental entity's selection
23 criteria at least fourteen days prior to publishing a request
24 for statements of qualifications. Public disclosure shall
25 be in a relevant contractor plan room service with statewide
26 circulation, a relevant construction lead generating service
27 with statewide circulation, and on an internet site sponsored
28 by either a governmental entity or a statewide association that
29 represents the governmental entity.

30 2. The governmental entity shall select or designate an
31 engineer licensed under chapter 542B, a landscape architect
32 licensed under chapter 544B, or an architect licensed
33 under chapter 544A by utilizing a quality-based selection
34 process. Fee-based selection of the engineer, landscape
35 architect, or architect shall be prohibited. The engineer,

1 landscape architect, or architect selected or designated by
2 the government entity under this subsection shall have the
3 responsibility of preparing construction documents for the
4 project and shall review the construction for conformance with
5 design intent.

6 3. a. (1) The governmental entity shall prepare a request
7 for statements of qualifications. The request shall include
8 general information on the project site, project scope,
9 schedule, selection criteria, and the time and place for
10 receipt of statements of qualifications. Selection criteria
11 and general information included in the request for statements
12 of qualifications may be developed in coordination with
13 the engineer, landscape architect, or architect selected or
14 designated by the governmental entity as provided under this
15 section.

16 (2) Selection criteria may include the contractor's
17 experience undertaking projects of similar size and scope
18 in either the public or private sector, past performance,
19 safety record, proposed personnel, and proposed methodology.
20 Selection criteria shall include experience in both the public
21 and the private sector. Selection criteria shall not include
22 specific delivery methods, including guaranteed maximum price
23 projects. In addition, selection criteria shall not include
24 training, testing, or other certifications that may only
25 be obtained through organized labor affiliations or other
26 limited-membership organizations.

27 (3) A request for statements of qualifications under this
28 subsection shall be subject to the requirements of section
29 73A.28. In addition, a governmental entity shall not by
30 ordinance, rule, or any other action relating to the request
31 for qualifications stipulate criteria that would directly
32 or indirectly restrict the selection of a construction
33 manager-at-risk to any predetermined class of providers based
34 on labor organization affiliation or any other criteria other
35 than that allowed pursuant to this paragraph.

1 *b.* The request for statements of qualifications shall be
2 posted not less than thirteen and not more than forty-five days
3 before the date for response in a relevant contractor plan room
4 service with statewide circulation, in a relevant construction
5 lead generating service with statewide circulation, and on an
6 internet site sponsored by either a governmental entity or a
7 statewide association that represents the governmental entity.
8 If circumstances beyond the control of the governmental
9 entity require postponement and there are no changes to the
10 project's contract documents, a notice of the revised date
11 shall be posted not less than four and not more than forty-five
12 days before the revised date for answering the request for
13 proposals and statements of qualifications in a relevant
14 contractor plan room service with statewide circulation, in a
15 relevant construction lead generating service with statewide
16 circulation, and on an internet site sponsored by either a
17 government entity or a statewide association that represents
18 the governmental entity.

19 *c.* The governmental entity shall receive, publicly open, and
20 read aloud the names of the contractors submitting statements
21 of qualifications. Within forty-five days after the date of
22 opening the statements of qualifications submissions, the
23 governmental entity shall evaluate each proposal or statement
24 of qualifications submission in relation to the criteria set
25 forth in the request.

26 4. *a.* After considering the statements of qualifications,
27 the governmental entity shall issue a request for proposals
28 to each contractor who meets the qualifications which shall
29 include selection and evaluation criteria. Each contractor
30 issued a request for proposals shall be permitted to submit
31 a proposal and each proposal submitted shall include the
32 construction manager-at-risk's proposed fees. The request
33 for proposals shall be subject to the requirements of section
34 73A.28 and the same limitations applied to selection criteria
35 for the request for statements of qualifications in this

1 chapter.

2 *b.* The governmental entity shall receive, publicly open, and
3 read aloud the names of the contractors submitting proposals.
4 Within forty-five days after the date of opening the proposals,
5 the governmental entity shall evaluate and rank each proposal
6 in relation to the criteria set forth in the applicable
7 request.

8 *c.* The governmental entity or its representative shall
9 select the construction manager-at-risk that submits the
10 proposal that offers the best value for the governmental
11 entity based on the published selection criteria and on
12 its ranking evaluation. The governmental entity shall
13 first attempt to negotiate a contract with the selected
14 construction manager-at-risk. If the governmental entity
15 is unable to negotiate a satisfactory contract with the
16 selected construction manager-at-risk, the governmental entity
17 shall, formally and in writing, end negotiations with that
18 construction manager-at-risk and proceed to negotiate with the
19 next construction manager-at-risk in the order of the selection
20 ranking until a contract is reached or negotiations with all
21 ranked construction managers-at-risk end.

22 *d.* The governmental entity shall make available to the
23 public the final scoring and ranking evaluation of the request
24 for proposals received.

25 5. *a.* If the estimated total cost of trade contract work
26 and materials packages is in excess of the adjusted competitive
27 bid threshold established in section 314.1B, the construction
28 manager-at-risk shall advertise for competitive bids, receive
29 bids, prepare bid analyses, and award contracts to qualified
30 firms on trade contract work and materials packages in
31 accordance with all of the following:

32 (1) The construction manager-at-risk shall prepare a
33 request for statements of qualifications. The request shall
34 include general information on the project site, project
35 scope, schedule, selection criteria, and the time and place

1 for receipt of statements of qualifications. The construction
2 manager-at-risk shall provide public notice of the request for
3 statements of qualifications in a relevant contractor plan room
4 service with statewide circulation, a relevant construction
5 lead generating service with statewide circulation, and on an
6 internet site sponsored by either a governmental entity or a
7 statewide association that represents the governmental entity.
8 The request for statements of qualifications shall be posted
9 not less than thirteen and not more than forty-five days before
10 the date for response.

11 (2) (a) The construction manager-at-risk shall utilize
12 objective prequalification criteria in the request for
13 statements of qualifications. All firms who meet the
14 objective prequalification criteria as a qualified firm
15 shall be allowed to submit a bid for the relevant trade
16 contract work and materials package. Upon determining which
17 firms meet the prequalification criteria, the construction
18 manager-at-risk shall notify all firms who responded to the
19 request for qualifications whether they successfully meet the
20 prequalification criteria. The notification shall include a
21 list of all firms who were deemed to have successfully met the
22 prequalification criteria. Notification shall be given no
23 less than fifteen days prior to the subcontractor bids being
24 due. Subcontractors who failed to meet the prequalification
25 standards shall also be provided with information regarding
26 which prequalification criteria were not met. In addition,
27 a firm that is prequalified with the state department of
28 transportation pursuant to section 314.1 shall be considered
29 to meet the objective prequalification criteria as a qualified
30 firm and shall be allowed to submit a bid for purposes of work
31 related to parking lots, streets, site development, or bridge
32 structure components.

33 (b) Prequalification criteria shall be limited to a
34 firm's experience as a contractor, capacity of key personnel,
35 technical competence, capability to perform, the past

1 performance of the firm and the firm's employees to include
2 the firm's safety record and compliance with state and federal
3 law, and availability to and familiarity with the location of
4 the project subject to bid. Prequalification criteria shall
5 be reasonably and materially related to the relevant trade
6 contract work and materials package. The prequalification
7 criteria shall not include training, testing, or other
8 certifications that may only be obtained through organized
9 labor affiliated organizations or other limited-membership
10 organizations.

11 (3) The governmental entity and the construction
12 manager-at-risk shall participate in the bid review and
13 evaluation process. The governmental entity and the
14 construction manager-at-risk shall open, announce the name
15 of the contractor submitting a bid, and file all proposals
16 received, at the time and place specified in the notice to
17 bidders. After the bids have been opened, reviewed, and
18 tabulated, the contracts shall be awarded to the lowest
19 responsive, responsible bidder. All awards and bids shall be
20 made available to the public.

21 (4) Notwithstanding any other provisions of this paragraph
22 to the contrary, the construction manager-at-risk may
23 self-perform work for a trade package that is below the
24 adjusted competitive bid threshold established in section
25 314.1B. If a trade package is in excess of the adjusted
26 competitive bid threshold established in section 314.1B, the
27 construction manager-at-risk shall notify the governmental
28 entity in writing of its intent to submit a bid proposal for
29 a trade package. In submission of a bid, the construction
30 manager-at-risk shall comply with the requirements of this
31 paragraph. The governmental entity shall receive the bids,
32 participate in, and provide oversight of all bid analyses
33 pertinent to the award of subcontracts or rejection of bids on
34 any trade package for which the construction manager-at-risk
35 submits a bid to self-perform. Where the construction

1 manager-at-risk is not the apparent low bidder, the government
2 shall be responsible for determining whether a recommendation
3 of award to the construction manager-at-risk is in the best
4 interests of the project. A construction manager-at-risk shall
5 not be required to comply with bidding requirements for general
6 conditions as provided in the contract with the governmental
7 entity. If the construction manager-at-risk self-performs
8 the construction work, it shall adhere to any agreement it
9 may have with one or more labor organizations. However, the
10 construction manager-at-risk shall not be obligated to adhere
11 to any terms and conditions of any labor agreement with one or
12 more labor organizations for those trade contracts that are
13 not self-performed by the construction manager-at-risk for the
14 public improvement, and such terms shall be deemed void and
15 unenforceable.

16 **b.** If a selected trade contractor materially defaults in
17 the performance of its work or fails to execute a contract,
18 the construction manager-at-risk may, without advertising,
19 fulfill the contract requirements or select a replacement trade
20 contractor to fulfill the contract requirements.

21 Sec. 10. NEW SECTION. **26A.4 Prohibited contracts.**

22 1. Notwithstanding any other provision of law to the
23 contrary, a governmental entity shall not be authorized
24 to enter into a design-build contract for the construction
25 of a public improvement. For purposes of this subsection,
26 "*design-build contract*" means a single contract providing for
27 both design services and construction services that may include
28 maintenance, operations, preconstruction, and other related
29 services.

30 2. A governmental entity shall not be authorized to
31 enter into a guaranteed maximum price contract for public
32 improvements relating to highway, bridge, or culvert
33 construction.